

## Federal Rules of Civil Procedure

Rule 28

Rule 37

**Rule 28. Persons Before Whom Depositions May Be Taken****(a) Within the United States.**

Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

**(b) In Foreign Countries.**

Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

**(c) Disqualification for Interest.**

No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

**Rule 37. Failure to Make or Cooperate in Discovery; Sanctions****(a) Motion for Order Compelling Disclosure or Discovery.**

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

**(1) Appropriate Court.**

An application for an order to a party shall be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court in the district where the discovery is being, or is to be, taken.

**(2) Motion.**

(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

**(3) Evasive or Incomplete Disclosure, Answer, or Response.**

For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

**(4) Expenses and Sanctions.**

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

**(b) Failure to comply with order.****(1) Sanctions by Court in District Where Deposition is Taken.**

If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

**(2) Sanctions by Court in Which Action Is Pending.**

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

**(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.**

(1) A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

**(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.**

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses,

including attorney's fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

**(e) [Abrogated]**

**(f) Electronically Stored Information.**

Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

**(g) Failure to Participate in the Framing of a Discovery Plan.**

If a party or a party's attorney fails to participate in the development and submission of a proposed discovery plan as required by Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

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## U.S. Tax Court Rules of Practice and Procedure

Rule 81

Rule 104

## TITLE VIII

### DEPOSITIONS

#### RULE 80. GENERAL PROVISIONS

**<sup>1</sup>(a) General:** On complying with the applicable requirements, depositions to perpetuate evidence may be taken in a pending case before trial (Rule 81), or in anticipation of commencing a case in this Court (Rule 82), or in connection with the trial (Rule 83). Depositions under this Title may be taken only for the purpose of making testimony or any document, electronically stored information, or thing available as evidence in the circumstances herein authorized by the applicable Rules. Depositions for discovery purposes may be taken only in accordance with Rule 74.

**(b) Other Applicable Rules:** For Rules concerned with the timing and frequency of depositions, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X. For provisions relating to tender of fees and other amounts to the witness to be deposed, see Rule 148(b).

#### RULE 81. DEPOSITIONS IN PENDING CASE<sup>2</sup>

**(a) Depositions To Perpetuate Testimony:** A party to a case pending in the Court, who desires to perpetuate testimony or to preserve any document, electronically stored information, or thing, shall file an application pursuant to these Rules for an order of the Court authorizing such party to take a deposition for such purpose. Such depositions shall be taken only where there is a substantial risk that the person or document, electronically stored information, or thing involved will not be available at the trial of the case, and shall relate only to testimony or document, electronically stored information, or thing which is not privileged and is material to a matter in controversy.

**(b) The Application:** (1) *Content of Application:* The application to take a deposition pursuant to paragraph (a) of

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<sup>1</sup> The amendments are effective as of January 1, 2010.

<sup>2</sup> The amendments to paragraphs (a), (b), (h), (i), and (j) are effective as of January 1, 2010.

this Rule shall be signed by the party seeking the deposition or such party's counsel, and shall show the following:

- (A) The names and addresses of the persons to be examined;
- (B) the reasons for deposing those persons rather than waiting to call them as witnesses at the trial;
- (C) the substance of the testimony which the party expects to elicit from each of those persons;
- (D) a statement showing how the proposed testimony or document, electronically stored information, or thing is material to a matter in controversy;
- (E) a statement describing any books, papers, documents, electronically stored information, or tangible things to be produced at the deposition by the persons to be examined;
- (F) the time and place proposed for the deposition;
- (G) the officer before whom the deposition is to be taken;
- (H) the date on which the petition was filed with the Court, and whether the pleadings have been closed and the case placed on a trial calendar;
- (I) any provision desired with respect to payment of expenses, fees, and charges relating to the deposition (see paragraph (g) of this Rule, and Rule 103); and
- (J) if the applicant proposes to video record the deposition, then the application shall so state, and shall show the name and address of the video recorder operator and of the operator's employer. (The video recorder operator and the officer before whom the deposition is to be taken may be the same person. See subparagraph (2) of paragraph (j) of this Rule.)

The application shall also have annexed to it a copy of the questions to be propounded, if the deposition is to be taken on written questions. For the form of application to take a deposition, see Appendix I.

(2) *Filing and Disposition of Application:* The application may be filed with the Court at any time after the case is docketed in the Court, but must be filed at least 45 days prior to the date set for the trial of the case. The application and a conformed copy thereof, together with an additional conformed copy for each additional docket number involved, shall be filed with the Clerk. In addition to serv-



ing each of the other parties to the case, the applicant shall serve a copy of the application on such other persons who are to be examined pursuant to the application, and shall file with the Clerk a certificate showing such service. Such other parties or persons shall file their objections or other response, with the same number of copies and with a certificate of service thereof on the other parties and such other persons, within 15 days after such service of the application. A hearing on the application will be held only if directed by the Court. Unless the Court shall determine otherwise for good cause shown, an application to take a deposition will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set. If the Court approves the taking of a deposition, then it will issue an order which will include in its terms the name of the person to be examined, the time and place of the deposition, and the officer before whom it is to be taken. If the deposition is to be video recorded, then the Court's order will so state.

**(c) Designation of Person To Testify:** The party seeking to take a deposition may name, as the deponent in the application, a public or private corporation or a partnership or association or governmental agency, and shall designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which such person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

**(d) Use of Stipulation:** The parties or their counsel may execute and file a stipulation to take a deposition by agreement instead of filing an application as herein above provided. Such a stipulation shall be filed with the Court in duplicate, and shall contain the same information as is required in items (A), (F), (G), (I), and (J) of Rule 81(b)(1), but shall not require the approval or an order of the Court unless the effect is to delay the trial of the case. A deposition taken pursuant to a stipulation shall in all respects conform to the requirements of these Rules.

**(e) Person Before Whom Deposition Taken: (1)**

*Domestic Depositions:* Within the United States or a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States (see Code section 7622) or of the place where the examination is held, or before a person appointed by the Court. A person so appointed has power to administer oaths and to take such testimony.

(2) *Foreign Depositions:* In a foreign country, depositions may be taken: (A) Before a person authorized to administer oaths or affirmations in the place in which the examination is held, either by the law thereof or by the law of the United States; (B) before a person commissioned by the Court, and a person so commissioned shall have the power, by virtue of the commission, to administer any necessary oath and take testimony; or (C) pursuant to a letter rogatory or a letter of request issued in accordance with the provisions of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, Mar. 18, 1970, 23 U.S.T. (Part 3) 2555. A commission, a letter rogatory, or a letter of request shall be issued on application and notice and on terms that are just and appropriate. The party seeking to take a foreign deposition shall contact the United States Department of State to ascertain any requirements imposed by it or by the foreign country in which the deposition is to be taken, including any required foreign language translations and any fees or costs, and shall submit to the Court, along with the application, any such foreign language translations, fees, costs, or other materials required. It is not requisite to the issuance of a commission, a letter rogatory, or a letter of request that the taking of the deposition in any other manner be impracticable or inconvenient; and both a commission and a letter rogatory, or both a commission and a letter of request, may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." A letter of request is addressed to the central authority of the requested State. The model recommended for letters of request is set

forth in the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Evidence obtained by deposition or in response to a letter rogatory or a letter of request need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions within the United States under these Rules.

(3) *Disqualification for Interest:* No deposition shall be taken before a person who is a relative or employee or counsel of any party, or is a relative or employee or associate of such counsel, or is financially interested in the action. However, on consent of all the parties or their counsel, a deposition may be taken before such person, but only if the relationship of that person and the waiver are set forth in the certificate of return to the Court.

**(f) Taking of Deposition:** (1) *Arrangements:* All arrangements necessary for taking of the deposition shall be made by the party filing the application or, in the case of a stipulation, by such other persons as may be agreed upon by the parties.

(2) *Procedure:* Attendance by the persons to be examined may be compelled by the issuance of a subpoena, and production likewise may be compelled of exhibits required in connection with the testimony being taken. The officer before whom the deposition is taken shall first put the witness on oath (or affirmation) and shall personally, or by someone acting under such officer's direction and in such officer's presence, record accurately and verbatim the questions asked, the answers given, the objections made, and all matters transpiring at the taking of the deposition which bear on the testimony involved. Examination and cross-examination of witnesses, and the marking of exhibits, shall proceed as permitted at trial. All objections made at the time of examination shall be noted by the officer upon the deposition. Evidence objected to, unless privileged, shall be taken subject to the objections made. If an answer is improperly refused and as a result a further deposition is taken by the interrogating party, the objecting party or deponent may be required to pay all costs, charges, and expenses of that deposition to the same extent as is provided in paragraph (g) of this Rule where a

party seeking to take a deposition fails to appear at the taking of the deposition. At the request of either party, a prospective witness at the deposition, other than a person acting in an expert or advisory capacity for a party, shall be excluded from the room in which, and during the time that, the testimony of another witness is being taken; and if such person remains in the room or within hearing of the examination after such request has been made, such person shall not thereafter be permitted to testify, except by the consent of the party who requested such person's exclusion or by permission of the Court.

**(g) Expenses:** (1) *General:* The party taking the deposition shall pay all the expenses, fees, and charges of the witness whose deposition is taken by such party, any charges of the officer presiding at or recording the deposition other than for copies of the deposition, and any expenses involved in providing a place for the deposition. The party taking the deposition shall pay for the original of the deposition; and, upon payment of reasonable charges therefor, the officer shall also furnish a copy of the deposition to any party or the deponent. By stipulation between the parties or on order of the Court, provision may be made for any costs, charges, or expenses relating to the deposition.

(2) *Failure To Attend or To Serve Subpoena:* If the party authorized to take a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the arrangements made, then the Court may order the former party to pay to such other party the reasonable expenses incurred by such other party and such other party's attorney in attending, including reasonable attorney's fees. If the party authorized to take a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because such party expects the deposition of that witness to be taken, then the Court may order the former party to pay to such other party the reasonable expenses incurred by such other party and such other party's attorney attending, including reasonable attorney's fees.

**(h) Execution and Return of Deposition:** (1) *Submission to Witness; Changes; Signing:* When the testimony is fully transcribed, the deposition shall be submitted to the

witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance, which the witness desires to make, shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, then the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless the Court determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. As to correction of errors, see Rules 85 and 143(d).

(2) *Form:* The deposition shall show the docket number and caption of the case as they appear in the Court's records, the place and date of taking the deposition, the name of the witness, the party by whom called, and the names of counsel present and whom they represent. The pages of the deposition shall be securely fastened. Exhibits shall be carefully marked, and when practicable annexed to, and in any event returned with, the deposition, unless, upon motion to the Court, a copy shall be permitted as a substitute after an opportunity is given to all interested parties to examine and compare the original and the copy. The officer shall execute and attach to the deposition a certificate in accordance with Form 16 shown in Appendix I.

(3) *Return of Deposition:* The deposition and exhibits shall not be filed with the Court. Unless otherwise directed by the Court, the officer shall deliver the original deposition and exhibits to the party taking the deposition or such party's counsel, who shall take custody of and be responsible for the safeguarding of the original deposition and exhibits. Upon payment of reasonable charges therefor, the officer also shall deliver a copy of the deposition and exhibits to any party or the deponent, or to counsel for any party or for the deponent. As to use of a deposition at the trial or in any other proceeding in the case, see paragraph

(i) of this Rule. As to introduction of a deposition in evidence, see Rule 143(d).

**(i) Use of Deposition:** At the trial or in any other proceeding in the case, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) The deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party may be used by an adverse party for any purpose.

(3) The deposition may be used for any purpose if the Court finds: (A) That the witness is dead; (B) that the witness is at such distance from the place of trial that it is not practicable for the witness to attend, unless it appears that the absence of the witness was procured by the party seeking to use the deposition; (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; (D) that the party offering the deposition has been unable to obtain attendance of the witness at the trial, as to make it desirable in the interests of justice, to allow the deposition to be used; or (E) that such exceptional circumstances exist, in regard to the absence of the witness at the trial, as to make it desirable in the interests of justice, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, then an adverse party may require the party offering the deposition to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. As to introduction of a deposition in evidence, see Rule 143(d).

**(j) Video Recorded Depositions:** (1) *General:* By stipulation of the parties or upon order of the Court, a deposition to perpetuate testimony to be taken upon oral examination may be video recorded. Except as otherwise provided by this paragraph, all other provisions of these Rules governing the practice and procedure in depositions shall apply.

(2) *Procedure:* The deposition shall begin by the operator stating on camera: (A) The operator's name and ad-

dress; (B) the name and address of the operator's employer; (C) the date, time, and place of the deposition; (D) the caption and docket number of the case; (E) the name of the witness; and (F) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself or herself and swear the witness on camera. At the conclusion of the deposition, the operator shall state on camera that the deposition is concluded. The officer before whom the deposition is taken and the operator may be the same person. When the deposition spans multiple units of video storage medium (tape, disc, etc.), the end of each unit and the beginning of each succeeding unit shall be announced on camera by the operator. The deposition shall be timed by a digital clock on camera which shall show continually each hour, minute, and second of the deposition.

(3) *Transcript:* If requested by one of the parties, then the testimony shall be transcribed at the cost of such party; but no signature of the witness shall be required, and the transcript shall not be filed with the Court.

(4) *Custody:* The party taking the deposition or such party's counsel shall take custody of and be responsible for the safeguarding of the video recording together with any exhibits, and such party shall permit the viewing of or shall provide a copy of the video recording and any exhibits upon the request and at the cost of any other party.

(5) *Use:* A video recorded deposition may be used at a trial or hearing in the manner and to the extent provided in paragraph (i) of this Rule. The party who offers the video recording in evidence shall provide all necessary equipment for viewing the video recording and personnel to operate such equipment. At a trial or hearing, that part of the audio portion of a video recorded deposition which is offered in evidence and admitted, or which is excluded on objection, shall be transcribed in the same manner as the testimony of other witnesses. The video recording shall be marked as an exhibit and, subject to the provisions of Rule 143(e)(2), shall remain in the custody of the Court.

**TITLE X****GENERAL PROVISIONS GOVERNING  
DISCOVERY, DEPOSITIONS, AND  
REQUESTS FOR ADMISSIONS****RULE 100. APPLICABILITY<sup>1</sup>**

The Rules in this Title apply according to their terms to written interrogatories (Rule 71), production of documents, electronically stored information, or things (Rule 72), examination by transferees (Rule 73), depositions (Rules 74, 81, 82, 83, and 84), and requests for admission (Rule 90). Such procedures may be used in anticipation of the stipulation of facts required by Rule 91, but the existence of such procedures or their use does not excuse failure to comply with the requirements of that Rule. See Rule 91(a)(2).

**RULE 101. SEQUENCE, TIMING, AND FREQUENCY**

Unless the Court orders otherwise for the convenience of the parties and witnesses and in the interests of justice, and subject to the provisions of the Rules herein which apply more specifically, the procedures set forth in Rule 100 may be used in any sequence, and the fact that a party is engaged in any such method or procedure shall not operate to delay the use of any such method or procedure by any other party. However, none of these methods or procedures shall be used in a manner or at a time which shall delay or impede the progress of the case toward trial status or the trial of the case on the date for which it is noticed, unless in the interests of justice the Court shall order otherwise. Unless the Court orders otherwise under Rule 103, the frequency of use of these methods or procedures is not limited.

**RULE 102. SUPPLEMENTATION OF RESPONSES<sup>2</sup>**

A party who has responded to a request for discovery (under Rule 71, 72, 73, or 74) or to a request for admission (under Rule 90) in a manner which was complete when

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<sup>1</sup>The amendments are effective as of January 1, 2010.

<sup>2</sup>The amendments are effective as of January 1, 2010.



made, is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any matter directly addressed to: (A) The identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which such person is expected to testify, and the substance of such person's testimony. In respect of the requirement to furnish reports of expert witnesses, see Rule 143(g)(1).

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which the party knows that: (A) The response was incorrect when made, or (B) the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

### **RULE 103. PROTECTIVE ORDERS**

**<sup>1</sup>(a) Authorized Orders:** Upon motion by a party or any other affected person, and for good cause shown, the Court may make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, including but not limited to one or more of the following:

(1) That the particular method or procedure not be used.

(2) That the method or procedure be used only on specified terms and conditions, including a designation of the time or place.

(3) That a method or procedure be used other than the one selected by the party.

(4) That certain matters not be inquired into, or that the method be limited to certain matters or to any other extent.

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<sup>1</sup> The amendment is effective as of January 1, 2010.

(5) That the method or procedure be conducted with no one present except persons designated by the Court.

(6) That a deposition or other written materials, after being sealed, be opened only by order of the Court.

(7) That a trade secret or other information not be disclosed or be disclosed only in a designated way.

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

(9) That expense involved in a method or procedure be borne in a particular manner or by specified person or persons.

(10) That documents or records (including electronically stored information) be impounded by the Court to ensure their availability for purpose of review by the parties prior to trial and use at the trial.

If a discovery request has been made, then the movant shall attach as an exhibit to a motion for a protective order under this Rule a copy of any discovery request in respect of which the motion is filed.

**(b) Denials:** If a motion for a protective order is denied in whole or in part, then the Court may, on such terms or conditions it deems just, order any party or person to comply or to respond in accordance with the procedure involved.

#### **RULE 104. ENFORCEMENT ACTION AND SANCTIONS<sup>1</sup>**

**(a) Failure To Attend Deposition or To Answer Interrogatories or Respond to Request for Inspection or Production:** If a party, or an officer, director, or managing agent of a party, or a person designated in accordance with Rule 74(b) or (c) or Rule 81(c) to testify on behalf of a party fails: (1) To appear before the officer who is to take such person's deposition pursuant to Rule 74, 81, 82, 83, or 84; (2) to serve answers or objections to interrogatories submitted under Rule 71, after proper service thereof; or (3) to serve a written response to a request for production or inspection submitted under Rule 72 or 73 after proper service of the request, then the Court on motion may make such orders in re-

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<sup>1</sup> The amendments (which affect all paragraphs of Rule 104) are effective as of January 1, 2010.

gard to the failure as are just, and among others it may take any action authorized under paragraph (b) or (c) of this Rule. If any person, after being served with a subpoena or having waived such service, willfully fails to appear before the officer who is to take such person's deposition or refuses to be sworn, or if any person willfully fails to obey an order requiring such person to answer designated interrogatories or questions, then such failure may be considered contempt of court. The failure to act described in this paragraph (a) may not be excused on the ground that the deposition sought, the interrogatory submitted, or the production or inspection sought, is objectionable, unless the party failing to act has theretofore raised the objection, or has applied for a protective order under Rule 103, with respect thereto at the proper time and in the proper manner, and the Court has either sustained or granted or not yet ruled on the objection or the application for the order.

**(b) Failure To Answer:** If a person fails to answer a question or interrogatory propounded or submitted in accordance with Rule 71, 74, 81, 82, 83, or 84, or fails to respond to a request to produce or inspect or fails to produce or permit the inspection in accordance with Rule 72 or 73, or fails to make a designation in accordance with Rule 74(b) or (c) or Rule 81(c), the aggrieved party may, within the time for completion of discovery under Rule 70(a)(2), move the Court for an order compelling an answer, response, or compliance with the request, as the case may be. When taking a deposition on oral examination, the examination may be completed on other matters or the examination adjourned, as the proponent of the question may prefer, before applying for such order.

**(c) Sanctions:** If a party or an officer, director, or managing agent of a party or a person designated in accordance with Rule 74(b) or (c) or Rule 81(c) fails to obey an order made by the Court with respect to the provisions of Rule 71, 72, 73, 74, 81, 82, 83, 84, or 90, then the Court may make such orders as to the failure as are just, and among others the following:

- (1) An order that the matter regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the case in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in evidence.

(3) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, dismissing the case or any part thereof, or rendering a judgment by default against the disobedient party.

(4) In lieu of the foregoing orders or in addition thereto, the Court may treat as a contempt of the Court the failure to obey any such order, and the Court may also require the party failing to obey the order or counsel advising such party, or both, to pay the reasonable expenses, including counsel's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

**(d) Evasive or Incomplete Answer or Response:** For purposes of this Rule and Rules 71, 72, 73, 74, 81, 82, 83, 84, and 90, an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

**(e) Failure to Provide Electronically Stored Information:** Absent exceptional circumstances, sanctions may not be imposed under this Rule on a party for failing to provide electronically stored information that was lost as a result of the routine, good-faith operation of an electronic information system.

Internal Revenue Manual §4.61.4 -- Examining Process, International Program  
Audit Guidelines, Information Gathering



## Part 4. Examining Process

### Chapter 61. LMSB International Program Audit Guidelines

#### Section 4. Information Gathering

#### 4.61.4 Information Gathering

- 4.61.4.1 Summons and Related Issues in IRC section 482 and Other Cases
- 4.61.4.2 Obtaining Information in General
- 4.61.4.3 Obtaining Information Specific to IRC section 482 Issues
- 4.61.4.4 Taxpayer's Books and Records
- 4.61.4.5 Summoning Officers and employees for Questioning
- 4.61.4.6 Obtaining Records of a Domestic Member of the Controlled Group
- 4.61.4.7 Obtaining Records from a Foreign Member of the Controlled Group
- 4.61.4.8 Information from and Disclosure to Unrelated Third Parties
- 4.61.4.9 Authority for Disclosure to Expert
- 4.61.4.10 Authority to Summon Unrelated Third Parties
- 4.61.4.11 Wording a Summons
- Exhibit 4.61.4-1 Formal Document Request IRC section 982

##### 4.61.4.1 (05-01-2006)

##### Summons and Related Issues in IRC section 482 and Other Cases

1. This chapter provides guidance primarily for IRC section 482 cases. These policies and procedures could apply equally to other issues.

##### 4.61.4.2 (05-01-2006)

##### Obtaining Information in General

1. Securing usable data for IRC section 482 examinations, or other complex international issues, may be difficult. Difficulties arise when:
  - A. The information is not in the hands of the tax department or tax manager
  - B. The information is regarded as sensitive by the taxpayer or third parties possessing the information
2. To be effective in securing data, the IE should:
  - A. Stress timely compliance with IDRs at the opening conference
  - B. Explain fully the document procurement process, where appropriate, including the right to issue a summons
  - C. Issue IDRs that are clear and precise. IDRs should not create an undue production burden
  - D. Issue IDRs that clearly identify records requested or persons to be questioned
  - E. Issue a written IDR even to follow up an oral request
  - F. Maintain a log of information requested and include from whom, date requested, and extent of compliance
  - G. Work to maintain a spirit of cooperation with the taxpayer for the voluntary production of information

##### 4.61.4.3 (05-01-2006)

##### Obtaining Information Specific to IRC section 482 Issues

1. The successful development of a 482 issue may require testimony with documentation. These are gathered from both the taxpayer and unrelated third parties. The four situations requiring IDRs for documentation and/or testimony (including a summons) are:
  1. **Controlled Entity Within the Meaning of IRC section 482:** Issue IDRs; No response—consider presummons and summons procedures; Some cases may require a *Formal Document Request* (FDR) or IRC section 6503(k) *Designated Summons*
  2. **Uncontrolled Entity Having Business Transactions with the Taxpayer and/or any Controlled Entity:** Issue IDR to the taxpayer; If the taxpayer cannot provide the information, use presummons procedures for an uncontrolled entity (notification of the taxpayer is not required for these summonses); Exhibit 2-1 should be reviewed
  3. **Third Party Record Keeper:** If the taxpayer cannot provide the information, use presummons procedures for an uncontrolled entity; Service is required to notify the taxpayer of any summonses; A taxpayer has the right to proceed to quash the summons
  4. **Comparable Uncontrolled Entity Having No Business Transactions with the Taxpayer:** Contact tax director of an uncontrolled entity by phone to ascertain willingness to provide information; If willing, issue IDR including why information is needed (subject to disclosure restrictions); If a presummons letter and/or summons is necessary coordinate with Counsel. The procedures of IRM 4.2 sub-section 1.6.12, Third party Contacts, must be followed prior to any third party contacts.

##### 4.61.4.4 (05-01-2006)

##### Taxpayer's Books and Records

1. Taxpayers are required to keep such permanent books of account or records as are sufficient to determine whether the taxpayer is liable for tax under Subtitle A of the Code.
  - A. An Area Director may require a taxpayer to keep specific records for future years. Notice is served in accordance with Reg. 1.6001-1 (d).

- B. The Service can request an appropriate officer, or other representative, of the taxpayer to provide information.
- C. If the corporate officer, or representative, refuses to provide requested information, the Service can issue a summons (See IRM 4.5 of this handbook).

**4.61.4.4.1 (05-01-2006)****Production of Taxpayer's Books and Records**

1. The Service can require a taxpayer to produce all of its books and records. This includes:
  - A. Controlled foreign affiliates as defined by IRC section 6038
  - B. A foreign corporation doing business in the United States
  - C. Records in the possession, custody, or control of a foreign person related to a 25 percent foreign-owned U.S. corporation (engaged in transactions with that U.S. corporation) may be obtained under IRC sections 7602, 7603, 7604, and 6038A
2. The Service can compel a taxpayer to disclose correspondence or communication with foreign affiliates if:
  - A. They are in the taxpayer's possession in the United States, or
  - B. They are relevant and material to the examination.
3. Correspondence and written communications requested should be:
  - Related to certain subjects and transactions under examination
  - Described with reasonable accuracy

**Note:**

Consult Counsel when drafting the request.

**4.61.4.5 (05-01-2006)****Summoning Officers and employees for Questioning**

1. A summons may be issued to key officers and employees actually engaged in setting prices, fees, and charges in controlled transactions being examined. The examining official must reasonably believe:
  - A. Important information is available from such key officer or employee.
  - B. They will not voluntarily disclose it.
  - C. The tax manager or holder of the taxpayer's power of attorney cannot or will not provide such information, or is clearly not fully divulging essential facts.

**Note:**

If the summons is for the testimony of non-U.S. citizens working in a foreign country, Counsel must be consulted. An IRC section 6038A Summons requires approval from the Associate Chief Counsel (International). See the *International Procedures* at IRM 4.60

2. Having summoned a corporate officer or key employee under (1) above, the Service may question him or her with respect to all aspects of his or her knowledge regarding intercompany activities that may be relevant and material.

**4.61.4.6 (05-01-2006)****Obtaining Records of a Domestic Member of the Controlled Group**

1. Determine who has custody or possession of relevant and material information.
  - A. Ask the taxpayer to secure the information from the controlled domestic entity.
  - B. If the taxpayer refuses or is unable to produce the requested information, an administrative summons may be served upon the appropriate officers of the controlled corporation.

**4.61.4.7 (05-01-2006)****Obtaining Records from a Foreign Member of the Controlled Group**

1. **U.S. Parent—Foreign Subsidiary.** When information is in the possession, custody, or control of a foreign subsidiary, or other foreign member of the domestic taxpayers' controlled group:
  - A. Issue an IDR requesting the taxpayer to obtain the necessary information
  - B. If the documentation is not provided, issue a *Formal Document Request* under IRC section 982 and a summons

**Note:**

IRC section 982 generally prohibits the introduction into civil proceedings by the taxpayer of any foreign-based documentation requested by the Service through an FDR and not provided to the service by the taxpayer. Guidelines are provided in Exhibit 4-1. IRC section 982 is limited to documentation.

**Caution:**

A summons should be issued simultaneously to cover testimony. Also, the taxpayer may establish reasonable cause for noncompliance with respect to the FDR.

2. **Foreign Parent—U.S. Subsidiary.** If the books and records are in the possession, custody, or control of a foreign parent, the examiner should:

- A. Issue an IDR requesting the taxpayer to obtain the information
- B. Apply the requirements of IRC 6038A if a foreign shareholder owns 25 percent or greater of the U.S. subsidiary

**Note:**

IRC section 6038A requires the foreign parent authorize an agent to provide requested records. Refer to the *International Procedures Handbook* for specific procedures.

#### 4.61.4.8 (05-01-2006)

##### Information from and Disclosure to Unrelated Third Parties

1. IRC section 482 issues require unrelated third party data for comparability. Documentary evidence, such as price, profit margins, pricing arrangements, distribution costs, credit terms, royalty rates on intangibles, etc. is reasonably self-explanatory. The unrelated party may request summonses for the production of testimony and/or documents. The service of a summons must be coordinated with Counsel.
2. Unrelated third parties will be requested to:
  - A. Furnish information about their transactions
  - B. Provide expert testimony as to comparability of the uncontrolled transaction with the controlled transaction

**Reminder:**

To serve as evidence in court, comparability must be established. If physical properties and circumstances of the controlled and uncontrolled transactions are demonstrably identical, expert opinion on comparability is not required. The nature and extent of disclosure are determined by the role of the unrelated third party.

**Example A - Unrelated Third Party Taxpayer Summons**

If an unrelated third party is requested to furnish information about its transactions, the **examiner may disclose:**

- A. The identity of a taxpayer under audit
- B. The questioned transaction(s) and method of operation of the taxpayer under audit, to enable the third party to understand what comparable transaction data he may provide

**The examiner should not disclose:**

- A. Any more information regarding the questioned transaction(s) and method of operation of the taxpayer than is absolutely necessary to enable the third party to understand what comparable transaction data it may provide;
- B. Information that may reasonably be considered "trade secrets" or information vital to the competitive position of the taxpayer under audit.

**Note:**

If disclosure of such information is deemed absolutely essential, it must be approved in advance by the International Territory Manager.

**Example B - Unrelated Third Party Taxpayer Retained as Expert**

Where the unrelated third party, as an expert, is to render an opinion on comparability the **examiner may disclose:**

- A. The identity of the taxpayer under audit
- B. Confidential information regarding the controlled and uncontrolled transactions
- C. Any information necessary for the third party taxpayer to prepare as an expert witness

**Note:**

Generally this person would sign a statement agreeing to disclosure rules of the Service. This person must be able to testify in the event of trial. This must be discussed with Counsel prior to disclosure of taxpayer information.

#### 4.61.4.9 (05-01-2006)

##### Authority for Disclosure to Expert

1. It is the position of the Service that the statutory authority of the Commissioner under IRC sections 7602, 7801, and 7802 to make investigations, determine correct tax liability, and administer and enforce the internal revenue laws implies authority to disclose tax information of a confidential nature to the expert. The party described in *Example A* as the supplier of documentary evidence could also be used as the expert witness. Since this would require extensive disclosure of the taxpayer's transactions prior to litigation, this factor with any other pertinent facts should be considered in deciding whether to use them as an expert.

#### 4.61.4.10 (05-01-2006)

##### Authority to Summon Unrelated Third Parties

1. IRC section 7602 authorizes the Commissioner to examine any "relevant or material" books and records and summon any person deemed proper to produce records or testify as to matters that "may be relevant or material to such inquiry."
2. There are occasions where summoning information from an unrelated third party may be possible. This summons **MUST** be coordinated with Counsel.

#### 4.61.4.11 (05-01-2006)

##### Wordina a Summons



1. IRC section 7603 requires the records sought be described with reasonable certainty.
  - A. The summons should be as specific and detailed as possible.
  - B. The summoned party must be able to reasonably identify the particular records required to be produced.
  - C. Assistance from Counsel should be obtained.
2. The administrative summons (Form 2039) includes the names of the taxpayer even if the summons is to an unrelated third party.
3. The burden of complying with a summons is ordinarily not a proper defense (relevancy and other prerequisites must be met). See United States v. Abraham, 905 F.2d 1276 (9th Cir. 1990) and Tax Liabilities of John Does v. United States, 866 F.2d 1015 (8th Cir. 1989).
4. To ensure enforceability, the unrelated third party summons should not be unreasonably onerous or oppressive. See First National Bank of Mobile v. United States, 160 F.2d 532 (5th Cir. 1947).
5. If an unrelated third party summons is used to obtain comparable information a court may be more stringent in examining.
  - The relevancy of the documents sought
  - The specificity of description
  - The reasonableness of the request

**Exhibit 4.61.4-1 (05-01-2006)****Formal Document Request IRC section 982****Introduction**

IRC section 982 prohibits the taxpayer from introducing foreign-based documentation (any document which is outside the United States and may be relevant or material to the tax treatment of an examined item, IRC section 982(d)(1)) into civil proceedings if the Service requested the documentation using a Formal Document Request (FDR) unless the taxpayer does the following:

- Complies substantially with the FDR
- Establishes reasonable cause for failure to comply

IRC section 982 is effective after September 3, 1982.

**Guidelines**

1. An Information Document Request (IDR) requesting specific information must precede the issuance of an FDR. The taxpayer must fail to substantially answer an IDR before an IE issues an FDR. An FDR should not be considered a routine information-gathering tool.
2. The FDR cannot request more information than was requested in the IDR. Advice of Counsel can be sought on a case-by-case basis as to the scope and wording of IDR's.
3. Administrative review procedures should be established. Counsel should be included in the review process.
4. A formal document request letter (see guideline 9) with Form 4564, Information Document Request, should be used as the FDR.
5. The reviewer of the FDR should consider whether:
  - a. The records may be relevant and material
  - b. The examination is conducted pursuant to a legitimate purpose under IRC section 7602
  - c. The information sought is not in our possession
  - d. The administrative steps required by the Code have been followed (e.g., the second examination requirements of IRC section 7605(b), if applicable)
  - e. The request is for books, records and other documentation, not testimony
  - f. The books and records are available in the United States
  - g. The place of production is reasonable
  - h. The documents need to be translated (translation may delay production of the documents)
6. The FDR must be mailed either by registered or certified mail.
7. The date of mailing begins the running of a 90-day period. During the 90-day period, the taxpayer can do the following:
  - a. Comply with the FDR
  - b. Begin a proceeding to quash the FDR
  - c. Move to extend the 90-day period
8. Proceedings to quash:
  - a. The IE should notify Counsel the day a petition to quash the FDR is received.
  - b. The Service can recommend compliance with the FDR in the proceeding to quash. If desired, the recommendation should so state.
  - c. The IE will forward the recommendation for defense of the petition to Counsel within six work days.
  - d. If the taxpayer begins a proceeding to quash, the civil and criminal statutes of limitations are suspended during the period the proceeding to quash and related appeals are pending.
9. Other considerations:
  - The IRC section 982 sanction prohibiting taxpayers from introducing foreign-based documentation into civil proceedings applies if the taxpayer "fails to substantially comply" with the FDR. Substantial compliance is a facts and circumstances test.
 

**Example:** Two items are requested and the taxpayer provides only one item; if the one missing item is the most significant, then the other item would possibly be excluded in a court proceeding.
  - The term "documentation" includes, but is not limited to, books and records.
  - Minority status in a foreign entity may or may not be reasonable cause for not producing records. The facts and circumstances of the case will determine whether minority status is reasonable cause.
    - Foreign nondisclosure law is not reasonable cause under IRC section 982. Therefore, taxpayers cannot use secrecy laws as a defense. The presence of secrecy laws do not make an FDR unreasonable.
    - If the foreign country makes it impossible to remove the original documents requested, not because of secrecy laws but because of foreign tax laws or laws as to the rights of creditors, true copies may be sufficient.
  - IRC section 982 FDRs and IRC section 7602 summonses are not mutually exclusive. Both may be issued simultaneously.
 

**Example:** FDRs apply only to foreign-based documentation, not to U.S.-based documentation. If the location of the documents is unknown, then the IE should issue both an FDR and a summons for the same information. In this situation, the IE should follow the separate procedures for the issuance of an FDR and a summons.
10. Formal Document Request Letter: Letter 2261(P)(3-87)

**Note:** Type on Appropriate Letterhead

Delivered by

**Certified/Registered Mail**

Taxpayer's name

Taxpayer's last known address

**FORMAL DOCUMENT REQUEST**

(Salutation)

This letter, including the attachment(s), constitutes a FORMAL DOCUMENT REQUEST under Internal Revenue Code section 982, and relates to documentation necessary to determine your United States tax liability for year(s) \_\_\_\_\_. We are providing you with the following information, as required by section 982:

- (1) **Time and place for production of documentation:** \_\_\_\_\_ AM; PM, \_\_\_\_\_ 19\_\_\_\_, at (physical address); or by mail postmarked before this date and sent to: (mailing address).
- (2) **Why previously submitted documentation is not sufficient:** You did not provide the requested information described on Form 4564, Information Document Request, which was mailed to you at your above address on \_\_\_\_\_. (State other reason if applicable.)
- (3) **Description of documents requested:** The documents are those shown on Form 4564, Information Document Request, which is attached and made a part of this request. You are required to provide a certified translation into English for requested documents that are in any language other than English.
- (4) **Consequences of failure to comply:** Code section 982(a) states that if a taxpayer "fails to substantially comply with any formal document request arising out of the examination of the tax treatment of any item (hereafter in this section referred to as the 'examined item') **before the 90th day after the date of the mailing of such request** on motion by the Secretary, any court having jurisdiction over a civil proceeding in which the tax treatment of the examined item in an issue **shall prohibit the introduction by the taxpayer of any foreign-based documentation covered by such request**" (Emphasis added).

Further, if the requested items are not received before the 90th day after the date of the mailing of this Formal Document Request (insert tax adjustments to be made). Thus, under the provisions of section 982, you will lose your opportunity to present any of the requested documents to any court having jurisdiction to adjudicate your case in a civil proceeding.

We further advise you that Code section 982(c)(2) allows you to bring a proceeding to quash a Formal Document Request not later than the 90th day after the day such request was mailed. You may institute such a proceeding in the United States District Court for the district in which you reside or are found. Under Code section 7701(a)(39), any citizen or resident of the United States who does not reside in (and is not found in) any United States judicial district shall be treated as residing in the District of Columbia for purposes of any provision of the Internal Revenue laws relating to jurisdiction of courts or enforcement of summons. Should you institute a proceeding to quash, the running of the 90-day period for complying with this Formal Document Request shall be suspended while the proceeding is pending. In a proceeding to quash, section 982 also allows the Secretary of the Treasury to seek to compel compliance with the Formal Document Request.

We urge you to promptly comply with this Formal Document Request.

Sincerely,

(Signature)  
(Title)

Attachment:  
As Stated

Letter 2261(P)(3-87)

[More Internal Revenue Manual](#)